

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1091

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION
AND WELFARE, APPELLANT

v.

RAYMOND BELCHER

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

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RELEVANT DOCKET ENTRIES

No. 1185 in the United States District Court For the Southern District of
West Virginia

Date	Filings—Proceedings
1970	
February 20	Complaint for Review of Decision Under Social Security Act, filed
June 19	Answer, Together With Certification of Administrative Record, filed
August 17	Defendant's Motion for Summary Judgment, filed
August 21	Plaintiff's Motion for Summary Judgment, filed
September 10	Memorandum Opinion of Court Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment, filed
September 14	Judgment Order Reversing Decision of Secretary of Health, Education and Welfare, filed
October 13	Defendant's Notice of Appeal to the United States Supreme Court, filed

No. 1091 in the United States Supreme Court

1970	
December 11	Jurisdictional Statement, filed
1971	
February 10	Brief for United Mine Workers of America, as Amicus Curiae, filed
February 11	Motion to Affirm, filed
March 1	Order of Court Noting Probable Jurisdiction

In the United States District Court for the Southern District
of West Virginia at Bluefield

Civil Action No. 1185

RAYMOND BELCHER, PLAINTIFF

vs.

ROBERT H. FINCH, SECRETARY OF HEALTH, EDUCATION, AND
WELFARE, WASHINGTON 25, D.C., DEFENDANT

COMPLAINT

Plaintiff, Raymond Belcher, whose post office address is General Delivery, Clear Fork, Wyoming County, West Virginia, states:

1. This action is brought pursuant to authority of the statute of the United States as set forth in United States Code, Title 42, Section 405(g), being Section 205(g) of the Social Security Act, as amended, to obtain a judicial review of a final decision by defendant by his Hearing Examiner; Herman T. Benn, dated October 31, 1969, review of which was refused by order of the Appeals Council of the Department of Health, Education, and Welfare by order dated January 20, 1970, in the matter of the claim of Raymond Belcher, Social Security Account Number 231-05-7239, for reduction of plaintiff's benefits under Section 224 of the Social Security Act by reason of the plaintiff having received from the West Virginia Workmen's Compensation Fund benefits for an injury dated March 25, 1968.

2. Plaintiff is an individual, residing at Clear Fork, Wyoming County, West Virginia, and is fifty-one (51) years of age, and was granted disability benefits based on his application filed May 20, 1968, beginning March 25, 1968, in the amount of \$156.00 monthly, and to his wife and two children in the amount of \$57.90 each, effective October, 1968; that on April 30, 1969, the Workmen's Compensation Director of the State of West Virginia granted the claimant Workmen's Compensation benefits in the amount of \$47.00 per week, beginning March 26, 1968, and that the plaintiff drew said amounts for 46 4/7ths weeks at the rate of \$47.00 per week from March 25,

1968, in the total amount of \$2,188.86; that notice was given to the plaintiff on January 27, 1969 that an off-set was being imposed against the benefits received by the plaintiff, his wife and two children pursuant to the provisions of Section 224 of the Social Security Act.

3. Your plaintiff states that pursuant to the said notice by the defendant dated January 27, 1969, your plaintiff's wife and children's benefits were reduced in accordance with the formula set forth in Section 224 of the Social Security Act.

4. Denial of your plaintiff, plaintiff's wife and children's full benefits as set forth in the original award of the defendant effective October, 1968, under the circumstances of his case is erroneous and not justified by the law applicable thereto, in that it specifically violates your plaintiff's rights as follows:

(a) That Section 224 of the Social Security Act, as amended, effective June 1, 1965, in applying a formula which takes into consideration benefits received by the plaintiff from the West Virginia Workmen's Compensation Act is a fund that is solely supported by contributions of employers of the State of West Virginia and that no part of said fund is Federal or State tax money; that the fund is a voluntary fund for employers engaged in business in the State of West Virginia, and is designated to make whole a person who is injured while working for an employer in the State of West Virginia and to prevent suits against the employer for damages if he is a member of the fund, as if he is not, the employee may sue the employer. It being specifically contended that membership in the Workmen's Compensation Fund is voluntary and to apply a law to the plaintiff or any person in the plaintiff's class reducing his Social Security benefits which has as its standard dependent wholly upon whether an employer desires to become a member of the West Virginia Workmen's Compensation Fund as contrasted to an employer who does not desire to become a member of the fund and has employees who may collect benefits either by way of insurance carried by the employer, voluntary payments by the employer, or by court proceedings for damages against the employer if he is not a member of the West Virginia Workmen's Compensation Fund. The plaintiff contending that this standard is abstract and discriminatory, denying your plaintiff his property without due process of law, and, therefore, violates his constitutional rights to receive the maximum benefits under the Social Security Act based on his application of May 20, 1968.

(b) That Section 224 of the Social Security Act requiring the Department of Health, Education and Welfare to promulgate rules and regulations effective June 1, 1965, and to reduce benefits of the plaintiff by the use of the formula set forth in Section 224 of the Social Security Act to 80% of the plaintiff's monthly earnings based on the five highest years after 1950 and prior to the date of his disability is unconstitutional, in that it is an act requiring the defendant to discriminate between the plaintiff and other recipients disabled prior to June 1, 1965, as his disability began after June 1, 1965. It being specifically contended that the law requires discrimination within a particular class.

(c) That the West Virginia Workmen's Compensation Fund created by the Acts of the West Virginia Legislature is financed solely by employers engaged in business in West Virginia is voluntary, is considered a part of the cost of doing business in the State of West Virginia, and constitutes a property right to the plaintiff and any employee who is employed in the State of West Virginia whose employer has elected to become a member of the Workmen's Compensation Fund, and, therefore, to use benefits received by the plaintiff to deny disability benefits which he is entitled to under the Social Security Act is also a property right, and denial thereof constitutes a taking of property without due process of law.

(d) That Section 224 of the Social Security Act requiring the Department of Health, Education, and Welfare to reduce or apply the formula as set forth in Section 224 of the Social Security Act to plaintiff, who is a recipient of Workmen's Compensation benefits pursuant to the West Virginia Workmen's Compensation Act of the State of West Virginia, a voluntary fund, either on a temporary total disability basis or on a permanent partial disability basis or a total and permanent disability basis, is invalid and unconstitutional Act of Congress, in that it deprives the plaintiff, his wife and dependent children of property rights without due process of law, and further that the reduction of benefits of the plaintiff's wife and children is also unconstitutional and unauthorized under Section 224 of the Social Security Act, when such formula as set forth in Section 224 does not apply to recipients of disability benefits under Sections 216 (i) and 223 of the Social Security Act which have had a period of disability established prior to June 1, 1965.

WHEREFORE, your plaintiff seeking aforesaid review, demands judgment that the decision of the defendant by his said Hearing Examiner and Appeals Council be reversed; that Section 224 of the Social Security Act is held inapplicable to the plaintiff's case; that Section 224 of the Social Security Act be declared unconstitutional, in that it singles out the plaintiff to deny him benefits he, his wife and children would otherwise be entitled to, except for his right to receive benefits from a voluntary fund, the West Virginia Workmen's Compensation Act; as the standard set forth in Section 224 of the Social Security Act is vague and requires the Secretary to discriminate between your plaintiff and other persons of the same class with disabilities established prior to June 1, 1965; that denial of the plaintiff's full benefits by reduction thereof pursuant to the terms of Section 224 of the Social Security Act constitute a denial of property without due process of law; that Section 224 of the Social Security Act is unconstitutional, in that it fails to give equal protection to all people of the same class; and that your plaintiff may have such other and further relief as to the Court may seem fit to grant.

RAYMOND BELCHER,

By Counsel.

WEST, BLACKSHEAR & RUNDLE,

Attorneys at Law, P.O. Drawer 469.

Pineville, West Virginia,

By: MARSHALL G. WEST,

Counsel for Plaintiff.

United States District Court for the Southern District of
West Virginia

[Title Omitted in Printing]

ANSWER

Comes now the defendant, Robert H. Finch, Secretary of Health, Education, and Welfare, by Leo J. Meisel Assistant United States Attorney for the Southern District of West Virginia and answers plaintiff's complaint herein filed, and for answer says:

1. Defendant admits the allegations in paragraph 1 thereof.
2. Defendant admits the allegations in paragraph 2 thereof, except that defendant states that based on the application filed

by the plaintiff on May 20, 1968, he was granted a period of disability beginning March 25, 1968, and benefits were paid to him, his wife and two children beginning with October 1968 in the amount of \$156.00 a month to him and to his wife and two children in the amount of \$57.90 a month each; and defendant further states that he has no knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff received workmen's compensation benefits from March 26 1968, totalling \$2,188.86.

3. Defendant admits the allegations in paragraph 3 thereof.

4. Defendant denies each and every allegation in paragraph 4 thereof.

5. Under the provisions of section 205(g) of the Social Security Act, 42 U.S.C. 405(g), the jurisdiction of the Court in this action, is limited to a review of the final decision of the defendant referred to in the complaint, and to the entry, upon the pleadings and transcript of the record herein, of judgment affirming, modifying, or reversing the defendant's decision, with or without remanding the cause for a rehearing.

6. Defendant further denies that plaintiff is entitled to the relief for which he prays under the applicable provisions of the Social Security Act; and also states that the facts and issues in this action are fully set forth in the transcript of the record herein, including the evidence on which the findings and decisions complained of are based, copy of which is attached hereto as part of the answer pursuant to section 205(g), above.

7. Defendant states that the complaint fails to state a cause of action.

8. Defendant states that the findings of fact of the Secretary of Health, Education, and Welfare are supported by substantial evidence and are conclusive.

WHEREFORE, defendant prays for judgment dismissing the complaint with costs and disbursements, and for judgment in accordance with section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)), affirming the decision complained of.

(S) Leo J. Meisel
LEO J. MEISEL,

Assistant United States Attorney.

[Certificate of Service Omitted in Printing]

United States District Court for the Southern District of
West Virginia.

[Title Omitted in Printing]

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Now comes the defendant and respectfully moves the Court for summary judgment in the above-entitled action pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, on the ground that upon the pleadings and the transcript of the record of which a certified copy was filed herein as part of the defendant's answer pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C.A. Section 405(g), the defendant is entitled as a matter of law to a judgment affirming the defendant's decision herein complained of.

(S) Leo J. Meisel

LEO J. MEISEL,

Assistant United States Attorney.

[Certificate of Service Omitted in Printing]

In The United States District Court for the Southern
District of West Virginia

[Title Omitted in Printing]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Now comes the plaintiff and respectfully moves the Court for Summary Judgment in the above-entitled action pursuant to Rule 56-B Federal Rules of Civil Procedure, upon the grounds that upon the pleadings and the transcript of the record of which a certified copy was filed by the defendant herein as part of the defendant's answer pursuant to Section 205 (g) of the Social Security Act, as amended, 42 U.S.C.A., Section 405 (g), the plaintiff, as a matter of law, is entitled to judgment reversing the decision of the defendant and granting the relief as prayed for in the plaintiff's complaint.

RAYMOND BELCHER, By Counsel.

WEST, BLACKSHEAR & RUNDLE,

Attorneys at Law, P.O. Drawer 469,

Pineville, West Virginia,

By: Marshall G. West,

MARSHALL G. WEST,

Attorney for Plaintiff.

[Certificate of Service Omitted in Printing]

In the United States District Court for the Southern District of
West Virginia at Bluefield

Civil Action No. 1185

RAYMOND BELCHER, PLAINTIFF

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND
WELFARE, DEFENDANT

[Memorandum Opinion]

CHRISTIE, *District Judge*:

This is an action under Section 205(g) of the Social Security Act, 42 U.S.C.A. 405(g), to review a final decision of the Secretary of Health, Education and Welfare. A decision by a hearing examiner on October 31, 1969, became the final decision of the Secretary on January 20, 1970, when it was affirmed by the Appeals Council. The matter is before the Court on the cross motions of the parties for summary judgment pursuant to Rule 56.

The plaintiff filed an application for disability insurance benefits on May 20, 1968, alleging that he became unable to work on March 25, 1968, as the result of an injury. On May 20, 1968, his wife and children also applied for benefits under the Act. The Secretary having determined that plaintiff was disabled within the meaning of the Act, all applicants were awarded benefits on September 30, 1968, such benefits to begin with the month of October 1968.

Later, plaintiff received an award of \$203.60 per month from the Workmen's Compensation Fund of West Virginia as the result of a work-related injury. Upon learning of this award, the Social Security Administration applied the "offset" provisions of Section 224 of the Social Security Act, 42 U.S.C.A. 424(a).¹

¹Section 224 of the Social Security Act, 42 U.S.C.A. Section 424, as amended, July 30, 1965 and January 2, 1968, provides:

"(a) If for any month prior to the month in which an individual attains the age of 62—

"(1) such individual is entitled to benefits under section 223, and

"(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Sec-

On February 10, 1969, plaintiff's attorney requested a reconsideration of the offset reductions which the Administration rejected on July 19, 1969. Thereupon, said attorney requested a hearing, held October 9, 1969, at which he presented argument supporting his claim that Section 224 deprived plaintiff and his family of a property right without due process of law and that it was discriminatory inasmuch as it discriminated unfairly between persons of a similar class. On October 31, 1969, the hearing examiner issued his opinion upholding the legality of the reduction of benefits. This decision became the final decision of the Secretary on January 20, 1970, when it was affirmed by the Appeals Council. Thereupon, plaintiff timely filed the instant action in this court.

I

As previously noted (footnote 1), Section 224 provides for a reduction in social security disability benefits for such time as the claimant receives workmen's compensation benefits for either total or partial disability. Workmen's compensation laws

retary has, in a prior month, received notice of such entitlement for such month, the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income will be reduced (but not below zero) by the amount by which the sum of—

"(3) such total of benefits under section 223 and 202 for such month, and

"(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan, exceeds the higher of—

"(5) 80 per centum of his 'average earnings', or

"(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

"(7) the total of the benefits under section 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

"(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made."

generally provide compensation to employees for loss resulting from industrial accidents and disease growing out of or resulting from their employment. The need for such a system arose out of conditions produced by modern industrial development and was premised upon the idea that the common-law rule of liability for personal injuries incident to the operation of industrial enterprises, which was based upon the negligence of the employer, with its defenses of contributory negligence, fellow servant's negligence, and assumption of risk, was outmoded by modern conditions.

West Virginia's Workmen's Compensation Law is found in Chapter 23 of the West Virginia Code. The law creates a "Workmen's Compensation Fund" which is sustained by contributions made to it by the employers who voluntarily elect to come under the provisions of the law, such contributions being based upon a percentage of the gross wages of their employees. The employees make no direct monetary contributions to the fund and the system is state-operated. Basically, the law takes from the employee his common-law right to sue his employer for damages for negligence in return for payment from the fund of limited or scheduled benefits for disability or death resulting from or growing out of the employment relationship, regardless of any fault of the employer.

In West Virginia the relation of employer and employee, under the law, is termed contractual in nature, the statute becoming an integral part of the contract of employment, and imposing upon the employer and employee, respectively, a limitation of rights and liabilities. *Gooding v. Ott*, 77 W. Va. 487, 87 S.E. 862; *Lancaster v. State Compensation Comr.*, 125 W. Va. 190, 23 S.E. 2d 601. Thus, in no sense of the word can one's workmen's compensation benefits be termed a gratuity; rather they must be treated as a contractual entitlement. So it is seen that the issue before this Court as to this aspect of the case is whether or not Section 224 of the Social Security Act, requiring reduction in plaintiff's social security benefits in proportion to the amount of his workmen's compensation benefits, may be constitutionally applied.

II

It cannot be seriously contended that the Social Security Act itself is unconstitutional for its constitutionality has been upheld in a long line of cases. *Helvering v. Davis*, 301 U.S. 619

(1937). See also *Steward Machine Company v. Davis*, 301 U.S. 584, (1937), and *Carmichael v. Southern Coal and Coke Company*, 301 U.S. 495 (1937). It is equally well settled that entitlement to social security benefits is subject to all conditions set out in the Social Security Act under which benefits are to be paid. *Flemming v. Nestor*, 363 U.S. 603 (1960); *Gruenwald v. Gardner*, 396 F. 2d 591 (2d Cir. 1968), cert. den. *Gruenwald v. Cohen*, 393 U.S. 982 (1968); *Price v. Flemming*, 168 F. Supp. 392 (D. Ct. N.J. 1968), affirmed 280 F. 2d 956 (3d Cir. 1960), cert. den. 365 U.S. 817 (1961).

Notwithstanding, as previously noted, plaintiff urges that the offset provision of Section 224 deprives him of his property (benefits) without due process of law. The answer would seem to hinge upon whether the plaintiff has such an indefeasible right or interest in his social security benefits that the concept of due process precludes application of the offset statute.

In *Flemming v. Nestor*, supra, the Court found that the old-age benefits of an alien, deported for cause under the Immigration and Nationality Act, could be lawfully terminated without offending the Due Process Clause of the Fifth Amendment. There the Court rationalized that the noncontractual interest of an employee covered by the Social Security Act cannot be analogized to that of the holder of an annuity, where the right to benefits is based on a contractual duty to pay premiums, and further that to hold otherwise would render the law too inflexible to permit necessary adjustment to ever-changing conditions. Justices Black, Douglas and Brennan dissented, each filing a separate dissenting opinion and each strongly arguing that the alien had a property right in his old-age benefits and to deprive him of them was a violation of due process.

We have been referred to several unreported decisions of district courts and one reported decision, *Bartley v. Finch*, 311 F. Supp. 876 (E.D. Ky. 1970), in support of the defendant's position that Section 224 may be constitutionally applied, and it would indeed be easy for us to follow that path. However, we are not convinced that the issue raised in this case deserves such cavalier treatment, especially in view of the more recent decision of the Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254 (1970), which tends to elevate entitlement to welfare to the status of a property right and to surround it with all the safeguards required by due process. Such benefits, the Court states (p. 262), are a matter of "statutory entitlement for persons qualified to receive them," and as support for this conclu-

sion the Court, in footnote 8 of the same page, refers to an article in the Yale Law Review stating that,

"It may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity.'"

Therefore, since the Court in *Goldberg* appears to have determined that entitlement to welfare is in the nature of a property right, protected by the Due Process Clause of the Fifth Amendment, by the same rationale it must be determined that one who has made direct contribution to the social security fund and becomes entitled to disability benefits thereunder should and ought to be accorded equal status and protection. For it seems to us to be patently unfair for the welfare recipient, under *Goldberg*, to have a "property right status" with all the procedural safeguards of the due process, while the social security recipient, under *Nestor*, is deprived of such status and protection. The distinction is not only completely illogical, but is grossly inequitable. Indeed, it appears to run counter to the intent of Congress as reflected by the comments by Senator George, Chairman of the Senate Finance Committee, at the time of the passage of the Social Security Act concerning its purpose and character, as quoted in the *Nestor* dissent, p. 623:

"It comports better than any substitute we have discovered with the American concept that free men want to *earn* their security and not ask for doles—that what is due as a matter of *earned right* is far better than a gratuity. . . . (Emphasis added)

"*Social Security is not a handout; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right, the individual is eligible to receive his benefit in dignity and self-respect.*" (Emphasis added) 102 Cong. Rec. 15110.

Thus, we must conclude that the concept espoused by the majority in *Nestor*, that one who has contributed to the social security fund and later becomes eligible to receive the benefits provided by the Social Security Act has no indefeasible property right to such benefits, is no longer to be considered a viable and controlling precedent for that principle, in view of the more recent holding in *Goldberg* that a welfare recipient who has made no direct contribution to the fund from which he draws benefits does have a recognizable property right to such benefits and one which is protected by all the safeguards of due process.

III

The other issue raised by the plaintiff is that the offset provision of Section 224 creates arbitrary discrimination between two classes of disabled workers, essentially indistinguishable from each other except that one is composed of those disabled persons who also receive workmen's compensation benefits and the other is composed of those disabled persons who also receive benefits from private disability insurance plans or tort claim awards, and that on the basis of this difference alone the first class has benefits reduced while the second class has benefits left untouched. In other words, the plaintiff complains that it is patently arbitrary to single out for the purpose of applying the offset *only* those who are receiving workmen's compensation and exclude those who are receiving benefits from other sources. The plaintiff further argues that the offset provision also discriminates between those who were disabled prior to June 1, 1965 and those who become disabled after June 1, 1965.

The defendant, in justification of these discriminatory features of the offset provision, argues that its purpose was to avoid duplication of *public* benefits. If this be its true purpose, it is certainly a laudable one and one with which this Court could wholeheartedly accept. However, the argument is inapplicable here for, as previously shown, workmen's compensation in West Virginia is not a gift from the public largesse, but rather is an entitlement arising from a contractual relationship between employer and employee, sanctioned by law, whereby each gave up a legal right in return for a concomitant legal benefit. That no public funds are involved is made abundantly clear by the provisions of West Virginia Code, 23-3-1. There, it is provided that the Workmen's Compensation Fund shall be supported by "premiums and other funds paid thereto by employers," from which shall be paid all benefits due the employees or their dependents and the expenses of administering the law. No public funds being thus involved, the defendant's argument that plaintiff's workmen's compensation award should be treated as a public benefit obviously becomes quite untenable and must be rejected.

In sum, therefore, it is held that in the circumstances of plaintiff's case, the application of Section 224 cannot be constitutionally applied, since to do so would deprive him of due

process and equal protection of the law under the Fifth and Fourteenth Amendments. The motion of the plaintiff for summary judgment will accordingly be granted and the motion of the defendant for summary judgment will be denied.

An appropriate order may be presented making this opinion a part of the record.

SIDNEY L. CHRISTIE,
United States District Judge.

United States District Court for the Southern District of West
Virginia at Bluefield

Civil Action No. 1185

RAYMOND BELCHER, PLAINTIFF

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION,
AND WELFARE, DEFENDANT

JUDGMENT ORDER

This cause having been submitted on brief, the transcript of record certified to this Court in the manner prescribed by law, and upon plaintiff's and defendant's motion for summary judgment; and the Court having made its findings of fact and conclusions of law, as appears from its memorandum opinion dated September 10, 1970, in which this Court expressed the opinion that defendant's motion for summary judgment should be denied, and that an order should be entered denying the defendant the right to offset workmen's compensation payments from the Social Security benefits made to plaintiff, it is therefore

ADJUDGED and ORDERED that the memorandum opinion of the Court, dated September 10, 1970, be, and the same is hereby filed and made a part of the record in this action, and that the decision of the Secretary of Health, Education, and Welfare, applying the offset provisions of Section 224 of the Social Security Act be, and the same is hereby reversed, and the proposed

offset by the Secretary against the plaintiff be, and it is hereby denied.

And be it further ADJUDGED and ORDERED:

(1) That counsel for the defendant shall promptly file with the Court a report stating the amount of the initial past due benefits to be paid the plaintiff and/or any ancillary beneficiaries, pursuant to this judgment order. A copy of such report shall be furnished by the defendant to counsel for the plaintiff; and

(2) That counsel for the plaintiff shall, within fifteen (15) days of the entry of this judgment order, file with the Court a verified petition for the approval and allowance of a fee for representing the plaintiff in this Court, pursuant to the provisions of Section 206(b)(1) of the Social Security Act, as amended July 30, 1965, 42 U.S.C.A. 406(b)(1), exhibiting therewith the original or a duplicate-original of any written contract of employment between the attorney and the plaintiff, and in any event, showing (a) what services were rendered by the attorney in the case and specifically the amount of time he devoted to it in this Court; (b) what expenses, if any, were personally incurred by the attorney in the prosecution of the case in this Court and for which he has not been reimbursed by his client; and (c) what sums, if any, have been paid the attorney by the plaintiff or by anyone for the plaintiff for services rendered in this Court. The petition must also contain an affirmation by the attorney that he will neither demand, receive nor accept from the plaintiff or from anyone for the plaintiff, any fee or remuneration for services rendered in this case in this Court other than that approved and allowed by this Court pursuant to such petition.

And this case shall remain upon the docket until such statement of initial benefits shall have been received from the defendant and until the matters arising upon the petition for the approval and allowance of an attorney's fee to counsel for the plaintiff shall have been adjudicated.

Enter: September 14, 1970.

(S) SIDNEY L. CHRISTIE,
United States District Judge.

United States District Court for the Southern District of West
Virginia at Bluefield

[Title Omitted in Printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED
STATES PURSUANT TO 28 U.S.C. 1252 AND 2101

Notice is hereby given that Elliot L. Richardson, Secretary of Health, Education, and Welfare, defendant herein acting by and through the United States Attorney for the Southern District of West Virginia, hereby appeals to the Supreme Court of the United States, pursuant to 28 U.S.C. 1252 and 2101, from the Judgment entered in this action on September 14, 1970.

W. WARREN UPTON,

*United States Attorney, Southern District of West
Virginia, 4006 Federal Building, 500 Quarrier
Street, Charleston, W. Va. 25301.*

United States District Court for the Southern
District of West Virginia at Bluefield

[Title omitted in Printing]

AFFIDAVIT OF SERVICE

STATE OF WEST VIRGINIA,
County of Kanawha:

W. Warren Upton, being first duly sworn on his oath deposes and says that he is a resident of the City of Charleston, County of Kanawha, State of West Virginia.

That he is the United States Attorney for the Southern District of West Virginia, at Bluefield, West Virginia, and

That on the 13th day of October, 1970 he mailed, postage prepaid, a copy of Notice of Appeal To The Supreme Court Of The United States, filed in the above-captioned case, to counsel for plaintiff-appellee, as follows:

Mr. Marshall G. West
Attorney At Law
P.O. Drawer 469
Pineville, West Virginia 24874

W. WARREN UPTON,
*United States Attorney, Southern District of West
Virginia, 4006 Federal Building, 500 Quarrier
Street, Charleston, W. Va. 25301.*

SUBSCRIBED and SWORN to before me, this 13th day of October, 1970.

(S) BETTY JEAN MILLER,
*Notary Public in and for
Kanawha County, West Virginia.*

My commission expires September 10, 1973.

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1091

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION
AND WELFARE, APPELLANT

v.

RAYMOND BELCHER

Appeal from the United States District Court for the Southern District of West Virginia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

MARCH 1, 1971.

WEST, BLACKSHEAR AND RUNDLE,
ATTORNEYS AT LAW;
Telephone: Area Code 304 732-2321,
P.O. Box 469
PINEVILLE, W. VA. 24874,
August 2, 1969.

MARSHALL G. WEST
PAUL D. BLACKSHEAR
RICHARD G. RUNDLE

Re: Raymond Belcher, Wage Earner, A/N 231-05-7239;
Juanita Belcher, Wage Earner's Wife; Edward Dewayne
Belcher, Dependent Child of Wage Earner; and Raymond
Belcher, Jr., Dependent Child of Wage Earner.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Welch, West Virginia.

DEAR SIR: This office is in receipt of a copy of the decision dated July 19, 1969, by Mr. C. C. Hall, Assistant Director, Bu-

reau of Disability Insurance, making a determination that the wage earner's wife and two dependent children's monthly benefits were reduced to \$23.10 per month because of benefits received by the wage earner from the West Virginia Workmen's Compensation Fund in the amount of \$203.60 per month.

The wage earner, his wife, and two dependent children object to this decision and respectfully request a hearing thereon before a Hearing Examiner of the Bureau of Hearings and Appeals, and specifically contend as follows:

(1) That the Social Security Act, as amended on June 1, 1965, which requires the Social Security Administration to reduce the benefits of the wage earner, his wife, and dependent children by reason of his right to receive Workmen's Compensation benefits from the Workmen's Compensation Fund, is discriminatory, in that the law does not apply to recipients of disability insurance benefits prior to June 1, 1965;

(2) That the United States Government makes no contribution whatsoever to the West Virginia Workmen's Compensation Fund; that this is a fund created by Acts of the West Virginia Legislature and is financed solely by employers of West Virginia and is considered a part of the cost of doing business in the State of West Virginia, and to which an employee has an absolute right to when he is injured and becomes disabled as a result of said injury;

(3) That the Act of Congress in amending the Social Security Act requiring the Social Security Administration to reduce this wage earner's benefits, as well as those of his wife and dependent children, is unconstitutional and invalid of the claimant, his wife and dependent children's rights to due process of law, in that it amounts to the taking of property rights without due process of law;

(4) That the Social Security Administration did not take into account in the computation of benefits which this wage earner, his wife, and dependent children were entitled to, attorney fees paid out of the Workmen's Compensation benefits, which by contract amounts to 25% of all benefits, it being specifically contended that

the plaintiff does not receive \$203.60 per month, but receives only \$152.70, after the deduction of attorney fees; and

(5) For other reasons and grounds to be assigned at the date of the hearing granted by the Bureau of Hearings and Appeals in this case.

Please accept this letter as your authority that this office represents the claimant wage earner, his wife, and dependent children; and further that the claimant wage earner, his wife, and dependent children respectfully request a hearing on the matters and things hereinbefore set forth.

Very truly yours,

WEST, BLACKSHEAR & RUNDLE,
(s) MARSHALL G. WEST.

MGW:hc

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE;
SOCIAL SECURITY ADMINISTRATION,
Bureau of Hearings and Appeals.

TRANSCRIPT

In the case of Raymond Belcher (claimant), Raymond Belcher (wage earner). (Social Security Account Number 231-05-7239).

Claim for Disability Insurance Benefits (Reduction), Wife's Insurance Benefits (Reduction), Child's Insurance Benefits (Reduction).

Hearing held at Welch, West Virginia on October 9, 1969.

Appearances: Raymond Belcher, Claimant; Marshall G. West, Attorney for Claimant; Juanita Belcher, Claimant's wife.

HERMAN T. BENN,
Hearing Examiner.

MARTHA P. CRITZER,
Hearing Assistant.

INDEX OF TRANSCRIPT

In the case of Raymond Belcher, Claimant and Wage Earner,
Account Number 231-05-7239

Testimony of Mr. Belcher..... Commencing p. 5 [fol. 27]

Oral Argument of Mr. West;

Attorney Commencing p. 9 [fol. 31]
[fol. 23] (The following is a transcript of the hearing held before Herman T. Benn, a Hearing Examiner of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, on October 9, 1969, at Welch, West Virginia, in the case of Raymond Belcher, Claimant and Wage Earner, social security account number 231-05-7239. The claimant, Raymond Belcher, appeared in person, and was represented by his attorney, Marshall G. West. The claimant's wife, Juanita Belcher, was also present at the hearing but did not testify.)

(The hearing commenced at 9:00 a.m., on October 9, 1969.)

OPENING STATEMENT BY HEARING EXAMINER

We are ready to proceed with the hearing on the application of Mr. Raymond Belcher for disability benefits based on his own earnings record, social security account number 231-05-7239. Let the record show that Mr. Belcher is being represented by Mr. Marshall G. West, Attorney at Law, and I would like to state for the record that a petition will be submitted to counsel, and it should be made out after the award has been received. And the 25% that is in the petition represents what will be withheld of the past-due benefits. Any amount that is requested should be stated in a dollar amount. Claimant will have 10 days to respond to a copy of the petition that will be sent to him. The 25%, as you know, only indicates the maximum amount that may be withheld. It does not indicate that that's the only sum that may be charged, but any sum charged must be approved.

Mr. Belcher, before we take testimony in this case, there are a few things I would like to tell you about this type of hearing. The purpose of the hearing is to make certain that a claimant who [fol. 24] has received an unfavorable determination has an opportunity to present his case to a person who has had no previous contact with the case. I am a Hearing Examiner and will make a new independent decision based on the record we make. That record will consist of the testimony that is received and any documents received in evidence, including pertinent documents that may be obtained in the future. This is not a formal proceeding like a court trial. Our purpose is to have the record complete so that the law may be correctly applied to your application. You will be asked some questions, and it is expected you will answer. After I have finished asking my questions, you will have an opportunity to tell me anything else that you think is important in this case, and you will have an opportunity to offer in evidence any documents which you may have.

The testimony is taken under oath, and a record is made by the reporter. When you testify, you should answer the questions directly, accurately, and truthfully. If you do not understand a question, ask that it be repeated or explained. If you do not know the answer, say you do not know, do not guess.

My first knowledge of this case came after you filed your request for hearing. At that time, the file in your case was sent to me. It contains the various documents which have been gathered up to the present time and the previous determinations made. I went [fol. 25] through the file and marked those papers which I thought were material and relevant; that is, those papers which are important in connection with this case. A list of those papers was made. Before the hearing started, your attorney had an opportunity to examine these documents.

HEARING EXAMINER: Are there any objections to the admission of these documents into the evidence?

ATTORNEY: None.

HEARING EXAMINER: There being no objections, the documents set out on the list of Exhibits will be received in evidence, being Exhibits 1 through 13. Do you have any further documentation you would like to submit at this time?

ATTORNEY: Not at this time, Mr. Hearing Examiner.

HEARING EXAMINER: At this point, I will briefly state what appears to be the facts in this case, the determinations made, and issues to be decided. When I have finished reading the statement to you, if you think it is incorrect in any particular, so state. Also, if you have any question about this statement, let me know what your question is.

The file shows that on May 20, 1968, you filed application for disability insurance benefits, stating you became unable to work because of your disability on March 25, 1968. On this same date, your wife, Juanita Belcher, filed application for wife's insurance [fol. 26] benefits and application for child's insurance benefits on behalf of Edward D. Belcher. You were notified on September 30, 1968, of your entitlement to disability benefits and your wife's entitlement to wife's benefits and to child's benefits on behalf of Edward D. Belcher as of October 1968; also, that an adjustment in these benefits would possibly be necessary if you received payments under a Workmen's Compensation plan.

On November 4, 1968, Mrs. Juanita Belcher filed application for child's insurance benefits for Edward D. and Raymond Belcher, Jr., and you were notified on January 27, 1969, of the entitlement of Raymond Belcher, Jr., to child's benefits effec-

tive October 1968; further, that an adjustment would be made in the benefits payable on your social security account because of a required reduction of such benefits due to your receipt of Workmen's Compensation payments.

By letter dated February 10, 1969, your attorney, Mr. Marshall West, requested a reconsideration on your behalf, stating objection to the reduction imposed on the benefits payable on your social security account because of your receipt of Workmen's Compensation payments. However, you were informed of the affirmation of the initial determination by letter dated July 19, 1969. Dissatisfied with this determination, Mr. West requested a hearing on your behalf, which is now being held. Your claim is that you object to the [fol. 27] reduction of the benefits payable on your social security account because of your receipt of Workmen's Compensation payments.

The general issue to be determined is the correctness of the social security disability insurance benefit rate to you, your wife, and your children, Edward D. and Raymond Belcher, Jr., are entitled under the Social Security Act, as amended.

The specific issue is whether the reduction of the benefits payable on your social security account was proper due to your receipt of Workmen's Compensation payments.

Section 216(i) of the Social Security Act provides for the establishment of a period of disability and Section 223 provides for the payment of disability insurance benefits.

Section 224 provides for the reduction of benefits based on disability on account of receipt of Workmen's Compensation.

Now, if you will stand and raise your right hand.

The claimant, RAYMOND BELCHER, having been first duly sworn, testified as follows:

EXAMINATION

By HEARING EXAMINER:

Q. Would you state for the record your name.

A. Raymond Belcher.

Q. You don't have a middle initial?

A. No, sir.

[fol. 28] Q. What is your present address?

A. Clear Fork.

Q. You get the mail at General Delivery, at Clear Fork?

A. Yes.

Q. In other words, you haven't changed your address since you started receiving your benefits?

A. No.

Q. You have a wife by the name of Juanita D. Belcher?

A. Un huh.

Q. You have how many children?

A. Three.

Mrs. BELCHER: We've got one married.

HEARING EXAMINER: You have one who is not dependent on you?

CLAIMANT: Yes, sir; that's right.

Q. About how old is she?

A. She'll be 21 in September.

Q. Are your other two children named Edward D. and Raymond Belcher, Jr.?

A. Yes, sir.

Q. Both under 18 years of age?

A. Yes, sir.

[fol. 29] Q. They are dependent on you at the present time?

A. Yes, sir.

HEARING EXAMINER: Now, counsel, I guess what we will do here is to have you make your statement with regard to your—to the objections you have with regard to the offset. Is that the purpose of the hearing?

ATTORNEY: I'd like to ask Mr. Belcher a question or two before I do that, Mr. Benn.

EXAMINATION

By ATTORNEY:

Q. Mr. Belcher, are you now receiving Workmen's Compensation benefits on a temporary total disability basis?

A. Yes, sir.

Q. You've received those, I believe, from the date of your injury which occurred on March 25, 1968. Is that correct?

A. Un huh; yes, sir.

Q. That's on the basis of \$47 per week?

A. I don't know how much it would be.

Q. The total is \$203.60 per month?

A. That's right.

Q. You received total disability benefits under the Workmen's Compensation Office, State of West Virginia, from March 25, 1968, up to the date of this hearing?

[fol. 30] A. Yes, sir.

Q. Are you paying any attorney's fee out of any part of this money to any lawyer, Mr. Belcher?

A. If we get it?

Q. Yes.

A. Yes.

Q. What amount, if any, are you paying out of that to an attorney?

A. 25%.

Q. 25% of the total disability benefits which you receive?

A. I guess, yes, sir; that's right.

Q. Then actually, Mr. Belcher, instead of receiving \$203.60 per month, you are receiving that less one-fourth, or 25% of that, or \$152.70 per month is actually what you are receiving instead of \$203.60. Is that correct?

A. You know I don't understand what you mean.

Q. Well, if you are paying an attorney 25%—

A. No, I ain't paying no attorney now.

Q. You're not paying an attorney now?

A. Not now.

Q. Then you're actually receiving \$203.60 a month now?

A. I don't understand.

[fol. 31] Q. \$203.60 average. Are you receiving the \$203.60 a month now?

A. That's right.

Q. You have been since the date of your injury up to date of this hearing?

A. Yes, sir.

Q. You haven't paid any attorney's fees out of that money at all?

A. No.

HEARING EXAMINER: Mr. West, I wonder if at this point, on this reconsidered determination, you had an opportunity to examine that award determination. Does the wording of this reconsidered determination and the factors as set forth in here represent a true picture?

ATTORNEY: Yes, the statement as set forth in the reconsideration determination, dated July 19, 1969, is a correct statement of the factual picture as I understand it.

ORAL ARGUMENT

By ATTORNEY:

Now, for the record, the claimant, the claimant's wife and the claimant's dependent children object to the reduction of social security benefits which they are entitled to under Section 223 of the Act, based upon a period of disability established for the wage [fol. 32] earner, Raymond Belcher, pursuant to the provisions of Section 216(i) of the Act, on the following grounds: one, that Section 224 of the Social Security Act, as amended, effective June 1, 1965, in applying a formula which takes into consideration benefits received by the claimant from the West Virginia Compensation Act is a fund that is solely supported by contributions of employers in the State of West Virginia who elect to become a member of the fund, that no part of Federal or State tax money is involved in the money paid to the claimant from the Workmen's Compensation Fund of the State of West Virginia. The claimant, working in the mines of West Virginia was injured, is drawing Workmen's Compensation on a temporary total disability basis, and this money is reimbursement to the claimant for his inability to perform his regular occupation on a temporary basis. It is considered part of his employment hazard, and the expense, the fund is a direct part of the cost of doing business in the State of West Virginia by this particular claimant's employer; secondly, that the Social Security Act, as amended, requiring the Department of Health, Education, and Welfare and regulations promulgated pursuant thereto, effective June 1, 1965, is unconstitutional in that it deprives this claimant of a property right which he is entitled to as a matter of law in the State of West Virginia without regard to the application of Section 224 of the [fol. 33] Social Security Act, as amended, and; thirdly, that Congress, in passing Section 224 of the Social Security Act, violated the claimant's constitutional right to receive monies from sources not contributed to by any agency of the Federal government and that such act is discriminatory in the claimants who were disabled prior to June 1, 1965, or had a period of disability established prior to that date, the Act does not apply but only to persons who have a period of disability established after said date, thus discriminating against a particular person

within a particular class; fourthly, that the West Virginia Workmen's Compensation Fund created by acts of the West Virginia Legislature, financed solely by employers of West Virginia, is considered a part of the cost of doing business in the State of West Virginia, and constitutes a property right to any employee who commences work for an employer who has elected to become a member of the Fund and, therefore, it is not earnings or income which should be considered by the Department of Health, Education, and Welfare in applying the formula as set forth in Section 224 of the Social Security Act, as amended; fifthly, that the Act of Congress in amending the Social Security Act in Section 224, requiring the Department of Health, Education, and Welfare to reduce or to apply the formula as set forth in Section 224 of the Social Security Act to wage earners in the State of West [fol. 34] Virginia who are recipients of Workmen's Compensation benefits pursuant to the Workmen's Compensation Act of the State of West Virginia, either on a temporary total disability basis or on a permanent partial disability basis, is invalid and unconstitutional act of Congress in that it deprives this wage earner, the claimant his wife, and dependent children, to property rights without due process of law; and further, that said Act is unconstitutional in that it discriminates against this particular claimant, his wife, and dependent children as singling out a particular claimant for reduction of his benefits when said law does not apply to recipients of benefits under section 216(i) and 223 of the Social Security Act, with a period of disability established prior to June 1, 1965.

HEARING EXAMINER: All right, counsel, do you have the legislation that sets up the Workmen's Compensation Act in West Virginia?

ATTORNEY: Yes, I have that in my office. In fact, I have a little red book and it comes as the whole thing, the latest thing that's out.

HEARING EXAMINER: Is there any part that is pertinent that you could type out that would indicate how the Fund is set up, as you have stated in your statement?

ATTORNEY: Yes, sir.

[fol. 35] HEARING EXAMINER: I wonder if you could prepare a statement and mail it to us so we can include it as an exhibit?

ATTORNEY: I'd be glad to.

HEARING EXAMINER: Further, if you have any documents or you could obtain any that would indicate whether or not the legislature of the State of West Virginia has agreed to permit a reduction—I understand there is such as arrangements have to be entered in by each state—and if they agree, then the Federal government only deducts after that point, and if you could find that law it would be helpful.

If there is nothing else, we will make a decision as soon as possible and send you a copy. This will terminate the hearing.

(The hearing terminated at 9:30 a.m., on October 9, 1969.)

HEARING EXAMINER: The record was reopened on October 31, 1969, to receive in evidence as Exhibit 14 letter by Marshall G. West to Herman T. Benn, dated October 30, 1969, with letter by Forrest J. Bowman, Executive Secretary, Workmen's Compensation Fund, Charleston, dated October 21, 1969. It is so received into evidence. There being nothing further, the record is closed.

CERTIFICATION

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded by a closed microphone reporter at the hearing held in the above case before Hearing Examiner Herman T. Benn.

(S) Winne W. Friend
WINNIE W. FRIEND,
Transcriber.

EXHIBIT NO. 5

[DEPARTMENT OF HEALTH, EDUCATION AND WELFARE]

[SOCIAL SECURITY ADMINISTRATION]

231-05-7239

09/30/68

Raymond & Juanita Belcher.....	10/68	\$234. 00	\$234. 00
General Delivery			
Clear Fork, W.V. 24822			
		DISABILITY, WIFE & CHILD	
Raymond.....		\$156. 00	-----
Juanita.....		\$78. 00	-----
Juanita Belcher for Edward D.....	10/68	\$78. 00	\$78. 00

An adjustment in benefits may be necessary if you receive payments under a workmen's compensation plan. You should notify us immediately when a decision is made on your workmen's compensation claim.

We are sending a copy of this notice to Marshall G. West.

We are sending a copy of this notice to U.M.W.A. Welfare and Retirement Fund.

Section 206(a) of the Social Security Act requires an attorney to obtain authorization from the Social Security Administration before he may charge any fee for his services. If the attorney has not yet done so, he should immediately file a petition for approval of a fee or notify the Administration if no fee is to be charged.

OA-30 (1-68)

ls 9/26/68

Z copy U.M.W.A. Welfare and Retirement Fund
c.c. Marshall G. West, Attorney

EXHIBIT No. 6

[DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE]

[SOCIAL SECURITY ADMINISTRATION]

231-05-7239 HC

01/27/69

Jaunita Belcher.....	10/68	\$57.90	\$43.20
For Raymond Belcher, Jr.			
General Delivery			
Clear Fork, WV 24822			
			CHILD

Due to the entitlement of Raymond your benefits and those payable to Edward have been reduced to \$56.90 each effective October 1968. The benefits payable to Raymond have been combined with those payable to Edward.

The law requires us to reduce your benefits because of the receipt of workmen's compensation by the disabled worker on whose social security record the benefits are payable.

To arrive at your benefit amount, we have estimated the disabled worker's actual earnings for the highest 5 consecutive years after 1950, disregarding the limit under social security. From our records we have determined that the disabled worker's highest 5 consecutive years of earnings after 1950 were 1963 to 1967. We have estimated the earnings for this period to be \$32,100.00, representing an average monthly wage of \$536.00.

You and the children are entitled to receive \$23.10 each beginning October 1968. You received \$78.00 for October 1968 through December 1968 therefore you have been overpaid. We have withheld the overpayment from the combined check due you and your husband for January 1969. The next check for your husband and you is to be received shortly after February 3, 1969 will be for \$14.40. Edward has been overpaid for October 1968 through December 1968. To recover this overpayment we must withhold benefits due the children until March 1969. Shortly after April 3, 1969 they will receive a check for \$43.40.

OA-30 (1/68)

PWP (1/69)

E74

Enclosures: SSA-1383, SSA-1420, SSA-1425.

EXHIBIT NO. 8

Give Account No. 231-05-7239 When Writing About Your Application to: Social Security District Office, Welch, West Virginia

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Baltimore, Maryland 21241.

Mr. RAYMOND BELCHER,
*General Delivery,
Clear Fork, West Virginia 24822.*

JULY 19, 1969.

DEAR MR. BELCHER: In view of your request for reconsideration a complete review of your claim has been made to determine if the original decision was correct under the law. This reconsideration was an independent and thorough re-examination of all the evidence on record about your claim. It was made by a specially trained staff different from the staff that made the original decision.

Upon review it has been determined that the original decision is correct and in accordance with the law and regulations. The enclosed Reconsideration Determination fully explains the decision.

If you believe that the Reconsideration Determination is not correct, you may request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. If you want a hearing you must request it not later than 6 months from the date of this notice. You should make any such request through your local Social Security District Office. Read the enclosed leaflet BHA-1 for a full explanation of your right to appeal.

Sincerely yours,

C. C. HALL,
(S) C. C. Hall
*Assistant Director,
Bureau of Disability Insurance.*

Enclosures:
OA-D1227
BHA-1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
BUREAU OF DISABILITY INSURANCE,
District Office, Welch, West Virginia.

RECONSIDERATION DETERMINATION

Name of wage earner or self-employed person, Raymond Belcher; Social Security Account Number, 231-05-7239; Name of claimant, Raymond Belcher; Type of Claim, Disability Insurance Benefits.

DETERMINATION

A period of disability was established for Mr. Raymond Belcher beginning March 25, 1968, based on his application filed May 20, 1968. He became entitled to disability insurance benefits effective October 1968 in the amount of \$156.00. His wife and two children became entitled to benefits on his earnings record in the amount of \$57.90 each effective October 1968. Due to his receipt of workmen's compensation payments, partial offset was imposed against the benefit amount of his wife and children. Mr. Belcher was so notified on January 27, 1969. On February 10, 1969, his attorney, Mr. Marshall G. West, requested reconsideration on his behalf because they do not believe that the workmen's compensation should be applied against their social security benefits.

The Social Security Act, as amended, provides that benefits payable to a disabled beneficiary, and to any member of his family entitled to benefits on his social security account, will be reduced for any month before the month the wage earner attains age 62 for which he is receiving a periodic workmen's compensation benefit. This provision is effective with respect to periods of disability which began after June 1, 1965.

Workmen's compensation, for offset purposes, are those payments made to a worker because of a work-related injury or disease, under a State or Federal workmen's compensation law or plan.

On April 30, 1969, the workmen's compensation Board of West Virginia advised that Mr. Belcher was entitled to workmen's compensation of \$47.00 per week beginning March 26, 1968. Since Mr. Belcher's workmen's compensation is being paid under the State workmen's compensation law as a result of his work-related disability, such compensation must be applied for offset purposes.

The Act limits total benefits payable to an individual and his dependents under both programs (workmen's compensation and social security) to the higher of 80 per cent of the individual's average current earnings, or the total benefits to which the individual and his dependents are entitled under social security.

The average current earnings are the higher of (1) the average monthly wage on which disability amount is based or (2) the average monthly wage based on the wage earner's five consecutive years of highest earnings after 1950.

In Mr. Belcher's case, it was determined that his highest five consecutive years of earnings after 1950 were 1963 through 1967, in which he had an average monthly wage of \$536.00. Eighty percent of \$536.00 is \$428.80. Thus, \$428.80 is the highest amount Mr. Belcher and his family may receive from social security benefits and workmen's compensation payments.

Since the amount of workmens compensation Mr. Belcher receives each month amounts to \$203.60, he and his family may receive a total of \$225.30 in social security benefits. Mr. Belcher receives \$156.00 and his wife and each of the three children receive \$23.10 a month.

The reduction of Mr. Belcher's and his familys social security benefits due to his receipt of workmen's compensation payments is in accordance with the Social Security Act, as amended, and is affirmed on reconsideration.

AUTHORITY: Section 224 of the Social Security Act, as amended.

JOHN E. BLUETT,
*Director, Division of Reconsideration,
Bureau of Disability Insurance.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Social Security Administration,
Bureau of Hearings and Appeals.

HEARING EXAMINER'S DECISION

In the case of Raymond Belcher, Claimant; Juanita Belcher, Claimant; Juanita Belcher on behalf of Edward & Raymond Belcher, Jr., Claimants.

Raymond Belcher (Wage Earner). (Social Security Account Number 231-05-7239).

Claim for Disability Insurance Benefits (Reduction), Wife's Insurance Benefits (Reduction), Child's Insurance Benefits (Reduction).

This case comes before the Hearing Examiner upon a request for hearing dated August 4, 1969 filed on behalf of Mr. Raymond Belcher, the claimant, by Mr. Marshall G. West, Attorney at Law. The request was for an appeal from a determination of the Social Security Administration with regard to the reduction imposed on the benefits payable on claimant's social security account because of his receipt of workmen's compensation benefits. After due notice, a hearing was held on October 9, 1969 at Welch, West Virginia. The claimant appeared in person and was represented by Mr. Marshall G. West, Attorney at Law, who appeared and participated in the hearing. Also appearing was Mrs. Juanita D. Belcher, wife of claimant.

On May 20, 1968 applications were filed for disability insurance benefits, wife's, and child's benefits for Edward D. Belcher. By letter dated September 30, 1968 notice was given of the award of the benefits for which the said applications were filed with entitlement to payments as of October 1968. Subsequently, application for child's insurance benefits for an additional child, Raymond Belcher, Jr., was filed on November 4, 1968. By letter dated January 27, 1969 notice was given of the entitlement to benefits for the last-stated child also to begin October 1968. Notice was also given that an adjustment of the above-stated benefits would be made, as required under the Act, on the ground that the said wage earner received workmen's compensation payments.

By letter dated February 10, 1969 Mr. Marshall West, as counsel for claimant, requested reconsideration, stating as grounds for reconsideration his objection to the reduction im-

posed upon the benefits payable on said wage earner's social security account because of the receipt of workmen's compensation payments. However, the initial determination was affirmed upon reconsideration and claimant was so notified by letter dated July 19, 1969, thereupon the said request for hearing was filed.

STATEMENT OF ISSUES AND APPLICABLE LAW

The general issue before the Hearing Examiner is whether under the facts of this case the benefits payable on the said wage earner's account are required to be adjusted under the Social Security Act, as amended.

The specific issue is whether the reduction of the benefits payable on the said wage earner's social security account was proper based on the ground that said wage earner received Workmen's Compensation payments for the same period he is entitled to and receives social security disability insurance benefits.

Section 224(a) of the Social Security Act as amended provides, in effect, and as pertinent here, for the reduction of social security benefits payable to a disabled beneficiary and to members of his family entitled on his account where the disabled beneficiary is also entitled to workmen's compensation. The provisions for reduction apply only with respect to benefits payable on the social security account of a disabled beneficiary for months after December 1965, where the period of disability began after June 1, 1965. The reduction of benefits is applicable to benefits payable only for months prior to the disabled beneficiary's attainment of age 62, and is applicable only for months after the month the Social Security Administration receives notice of the receipt of workmen's compensation by the beneficiary. Offset reductions are first applied to the dependents' benefits. Any excess still to be offset is taken from the wage earner's benefit.

Where benefits are subject to reduction because of the receipt of workmen's compensation, the law provides that total benefits payable on the social security account of a disabled beneficiary shall be reduced by the amount which combined social security benefits and workmen's compensation exceed the higher of:

1. 80 percent of the disabled beneficiary's average

monthly wage as computed under the Social Security Act, or

2. total social security benefits for which there is entitlement on the disabled beneficiary's account.

SUMMARY OF THE FACTS INVOLVED

Claimant alleges his date of birth to be June 3, 1918. He is married and lives near Clear Fork, West Virginia, with his wife, Juanita, and two sons, Edward and Raymond, Jr. Claimant's representative, Marshall G. West, Esquire, Attorney at Law, stated at the hearing the factual background as set out in the reconsideration of determination statement attached to the notice of said determination dated July 19, 1969, and included in the evidence as exhibit 8. The following excerpt is from the said statement: A period of disability was established for the claimant, Mr. Belcher, beginning March 25, 1968, based on his application filed May 20, 1968. He became entitled to disability insurance benefits effective October 1968 in the amount of \$156.00 monthly. His wife and two children became entitled to monthly benefits on his earnings record in the amount of \$57.90 each, effective October 1968.

On April 30, 1969, the Workmen's Compensation Board of West Virginia advised the said claimant of his entitlement to workmen's compensation in the amount of \$47.00 per week beginning March 26, 1968. Due to his receipt of said Workmen's compensation benefits, notice was given by letter dated January 27, 1969, which is included in the evidence as exhibit 6, that an offset was being imposed against the benefits being received by claimant's wife and two children.

It is further set out in said statement that workmen's compensation, for offset purposes, are those payments made to a worker because of a work-related injury or disease, under a state or federal workmen's compensation law or plan.

COUNSEL'S STATEMENT REGARDING THE OFFSET

Mr. Marshall West, attorney for claimant, in effect, made the following argument in support of claimant's position with regard to offset required under the Act when a claimant is receiving workmen's compensation under a state or federal plan and for the same period he is entitled to and receives disability insurance benefits:

The statement as set forth in the reconsideration determination dated July 19, 1969 is a correct statement of the factual picture as I understand it. Now, for the record, the claimant, the claimant's wife, and the claimant's dependent children object to the reduction of social security benefits which they are entitled to under Section 223 of the Act, based upon a period of disability established for the wage earner, Raymond Belcher, pursuant to the provisions of Section 216(i) of the Act on the following grounds: *one*, that Section 224 of the Social Security Act, as amended, effective June 1, 1965, in applying a formula which takes into consideration benefits received by the claimant from the West Virginia Compensation Act is a fund that is solely supported by contributions of employers in the State of West Virginia, who elect to become a member of the fund, that no part of federal or state tax money is involved in the money paid to the claimant from the Workmen's Compensation Fund of the State of West Virginia. The claimant working in the mines of West Virginia was injured, is drawing workmen's compensation on a temporary total disability basis, and this money is reimbursement to the claimant for his inability to perform his regular occupation on a temporary basis. It is considered part of his employment hazard, and the expense, the fund, is a direct part of the cost of doing business in the State of West Virginia by this particular claimant's employer; *secondly*, that the Social Security Act, as amended, requiring the Department of Health, Education and Welfare and regulations promulgated pursuant thereto, effective June 1, 1965, is unconstitutional in that it deprives this claimant of a property right which he is entitled to as a matter of law in the State of West Virginia, without regard to the application of Section 224 of the Social Security Act, as amended, and; *thirdly*, that Congress, in passing Section 224 of the Social Security Act, violated the claimant's constitutional right to receive monies from sources not contributed to by any agency of the federal government, and that such act is discriminatory in that claimants who were disabled prior to June 1, 1965 or had a period of disability established prior to that date, the Act does not apply, but only to persons who have a period of disability established after said date, thus discriminating against a particular person within a particular class; *fourthly*, that the West Virginia Workmen's Compensation Fund created by acts of the West Virginia Legislature, financed solely by employers of West

Virginia, is considered a part of the cost of doing business in the State of West Virginia, and constitutes a property right to any employee who commences work for an employer who has elected to become a member of the fund; and therefore, it is not earnings or income which should be considered by the Department of Health, Education and Welfare in applying the formula as set forth in Section 224 of the Social Security Act, as amended; *fifthly*, that the Act of Congress in amending the Social Security Act in Section 224, requiring the Department of Health, Education and Welfare to reduce or to apply the formula as set forth in Section 224 of the Social Security Act to wage earners in the State of West Virginia who are recipients of workmen's compensation benefits pursuant to the Workmen's Compensation Act of the State of West Virginia, either on a temporary total disability basis or on a permanent partial disability basis, is invalid and unconstitutional act of Congress in that it deprives this wage earner, the claimant, his wife, and dependent children, to property rights without due process of law; and further, that said Act is unconstitutional in that it discriminates against this particular claimant, his wife, and dependent children as singling out a particular claimant for reduction of his benefits when said law does not apply to recipients of benefits under Section 216(i) and 223 of the Social Security Act with a period of disability established prior to June 1st 1965.

RATIONALE

The statutory law with regard to offset, as pertinent here, has already been set out hereinabove. The amplifying regulation pertaining to offset, Section 404.408 of Social Security Regulations No. 4, provides, in effect, that Section 224 of the Act, as amended, requires that benefits payable to a disabled beneficiary and to any member of his family on his social security account be reduced for any month before the month the wage earner attains age 62 for which the wage earner is receiving a periodic workmen's compensation benefit. This provision is effective with respect to periods of disability which began after June 1, 1965.

The said regulation further provides that workmen's compensation, for offset purposes, are those payments made to a worker because of a work-related injury or disease, under a state or federal workmen's compensation law or plan.

In addition to the above, the said amplifying regulation provides, in effect and as pertinent here, that the said Act limits total benefits payable to an individual and his dependents under both programs (workmen's compensation and social security) to the higher—80 percent of the individual's average current earnings, or the total benefits to which the individual and his dependents are entitled under social security.

The said regulation further provides, in effect, that no reduction is made if the workmen's compensation law or plan involved provides for the reduction of such periodic benefits when anyone is entitled to a benefit under Title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under Section 223 of the Act.

The thrust of claimant's position is not to the correctness of the computation, but it is that the Act, insofar as it requires the above-stated offset, denies claimant and his beneficiaries a property right to which they are entitled, thereby violating a constitutional right.

The Examiner is not aware of any provision of law upon which jurisdiction is given his office to rule on this issue. He is, therefore, confining his decision to the issue of whether the action taken with regard to the offset is in accordance with the Social Security Act, as amended.

FINDINGS OF THE HEARING EXAMINER

The Hearing Examiner has carefully considered the entire record and, based upon a preponderance of the creditable evidence and applicable law, makes the following specific findings:

1. The claimant has not attained age 62 years.
2. A period of disability was established for claimant beginning March 25, 1968, based on his application filed May 20, 1968, and he and his dependents (wife and two children) became entitled to benefits on his earnings record as of October 1968.
3. Claimant became entitled to and began to receive workmen's compensation payments as of March 26, 1968 under the West Virginia State law.
4. The evidence fails to establish that the West Virginia law or plan has any provision for reduction of benefits to which an individual is otherwise entitled under its workmen's compensation law when there is an entitlement by such individual to disability benefits under Section 223 of the Act.

DECISION

It is the decision of the Hearing Examiner that the reduction or offset of the benefits based upon the claimant's social security account due to receipt by him of workmen's compensation payments is in accordance with Section 224 of the Social Security Act, as amended; and, therefore, it is correct under the law. The determination issued by the Social Security Administration in this case will continue in effect.

(S) Herman T. Benn
HERMAN T. BENN,
Hearing Examiner,
920 South Jefferson Street,
Roanoke, Virginia 24016.

Date Oct. 31, 1969.

WEST, BLACKSHEAR AND RUNDLE,
ATTORNEYS AT LAW,
TELEPHONE: AREA CODE 304 732-2321,
P.O. Box 469,
PINEVILLE, W. VA. 24874,

MARSHALL G. WEST
PAUL D. BLACKSHEAR
RICHARD G. RUNDLE

November 3, 1969.

Re: Raymond Belcher, Claimant; Juanita Belcher, Claimant;
Juanita Belcher on behalf of Edward & Raymond Belcher,
Jr., Claimants.

DEPARTMENT OF HEALTH, EDUCATION & WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Welch, West Virginia.

DEAR SIR: The above-captioned claimants respectfully object to the decision of Mr. Herman T. Benn, Hearing Examiner of the Bureau of Hearings and Appeals, dated October 31, 1969, denying the re-instatement of reduction or offset of the benefits based upon the claimant's Social Security account due to receipt by him of Workmen's Compensation benefits pursuant to Section 224 of the Social Security Act, as amended.

The claimants respectfully request a review of the Hearing Examiner's decision by the Appeals Council of the Bureau of Hearings and Appeals.

Please consider this letter as your authority that the above-captioned claimants respectfully request a review as afore-stated, and that this office represents the claimant.

Very truly yours,

WEST, BLACKSHEAR & RUNDLE,
(S) Marshall G. West
MARSHALL G. WEST.

MGW: dw

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
BUREAU OF HEARINGS AND APPEALS,
P.O. Box 2518, WASHINGTON, D.C. 20013,
January 20, 1970.

Refer to: 231-05-7239

HA:C

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mr. RAYMOND BELCHER,
General Delivery,
Clear Fork, West Virginia 24822.

DEAR MR. BELCHER: Your request for review of the hearing examiner's decision has been carefully considered by the Appeals Council. The Council's consideration of your request has included all the evidence in your case, the law and regulations applicable to your claim, the hearing examiner's evaluation of the facts and the reasoning in his decision, and your reasons for believing your claim should be allowed.

The Appeals Council has concluded that the decision of the hearing examiner is correct. Further action by the Council would not, therefore, result in any change which would be of advantage to you. Accordingly, the hearing examiner's decision stands as the final decision of the Secretary in your case.

If you desire a review of the hearing examiner's decision by a court you may commence a civil action in the district court of the United States in the judicial district in which you reside *within sixty (60) days* from this date. See section 205(g) of the Social Security Act, as amended (section 405(g), Title 42, United States Code). If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant.

Sincerely yours,

JOHN T. ALLEN,
Member, Appeals Council.
LUCILLE V. COVEY,
Member, Appeals Council.

cc:
Marshall G. West, Esq.

